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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FLOYD LYNTELLIS GARRETT,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

CASE NO. 06CV0526-H  
95CR1149-H

**ORDER DISMISSING  
SUCCESSIVE PETITION**

On March 13, 2006, Petitioner Floyd Lyntellis Garrett ("Petitioner") filed a successive petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. (Case No. 95cr1149, Doc. No. 125.) On May 26, 2006, the Court issued an order to show cause why the petition should not be dismissed with prejudice as a successive petition under 28 U.S.C. §§ 2255 and 2244(b). (Doc. No. 127.) Petitioner filed a response on June 22, 2006. (Doc. No. 129.) The government filed a response on June 28, 2006. (Doc. No. 131.) Plaintiff filed a reply to the government's response on July 12, 2006. (Doc. No. 132.) For the following reasons, the Court DISMISSES the petition as successive.

**Discussion**

On June 21, 1996, Petitioner was convicted of armed bank robbery in violation of 18 U.S.C. §§ 2113(a) and (d), and of using and carrying a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c). Petitioner appealed. (Doc. No. 81.) On June 8, 1999, the Ninth Circuit Court of Appeals affirmed his conviction.

1 United States v. Garrett, 179 F.3d 1143 (9th Cir. 1999) (en banc), cert. denied, 528 U.S.  
2 978 (1999).

3       Petitioner filed his first petition for writ of habeas corpus in this Court on  
4 February 29, 2000 in Case No. 00CV0443-H. (Doc. No. 100.) On August 7, 2000, the  
5 Court denied the petition for writ of habeas corpus on the merits. (Doc. No. 104.)  
6 Petitioner then filed a request for certificate of appealability. This Court denied the  
7 request for a certificate of appealability on October 27, 2000. (Doc. No. 107.) On  
8 April 18, 2001, the request for certificate of appealability was filed in the Court of  
9 Appeals. (Doc. No. 111.) On June 18, 2001, the Court of Appeals denied the request  
10 for certificate of appealability in Case No. 01-55688.

11       On February 19, 2004, Petitioner filed a request for relief in this Court under  
12 Fed. R. Crim. P. 52(b). (Doc. No. 118.) The Court denied his request on the merits and  
13 alternatively as a successive § 2255 petition on February 26, 2004. (Doc. No. 116.)  
14 On March 29, 2004, Petitioner filed a notice of appeal in this Court of the Court's  
15 decision denying his request on the merits or as a successive petition. (Doc. No. 119.)  
16 This Court construed the notice as a request for a certificate of appealability, which it  
17 denied on April 22, 2004. (Doc. No. 120.) The request for certificate of appealability  
18 was filed in the Court of Appeals. The Court of Appeals denied the certificate of  
19 appealability on June 7, 2004 in Case No. 04-55691. Petitioner filed a motion to recall  
20 the mandate in the Court of Appeals on February 28, 2005. That Court construed the  
21 motion as a request for reconsideration. The Court of Appeals then denied the request  
22 for reconsideration and also denied all outstanding motions, closed the case, and stated  
23 that it would consider no further filings from Petitioner in that closed docket.

24       On March 13, 2006, Petitioner filed another petition for writ of habeas corpus  
25 in this Court. Under 28 U.S.C. § 2255, a successive habeas petition brought under that  
26 provision must be certified by a panel of the appropriate court of appeals prior to the  
27 district court's determination on the merits. See 28 U.S.C. §§ 2255, 2244(b); see also  
28 Felker v. Turpin, 518 U.S. 651, 662-64 (1996). Petitioner filed his first petition for

1 writ of habeas corpus pursuant to 28 U.S.C. § 2255 in 2001 and a second request for  
2 relief which the Court construed as a habeas petition in 2004. In both instances, the  
3 Court denied relief. Therefore, the current petition is successive. As Petitioner has  
4 not sought the permission of the Ninth Circuit to file a successive petition, the Court  
5 **DISMISSES** the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255 as  
6 successive.

7 **Conclusion**

8 For the reasons stated above, the Court **DISMISSES** the petition for writ of  
9 habeas corpus as successive under 28 U.S.C. § 2255. Petitioner must file an  
10 application for leave to file a second or successive petition in the Ninth Circuit Court  
11 of Appeals before this Court may consider his successive petition under 28 U.S.C. §  
12 2255.

13 IT IS SO ORDERED.

14 Dated: 10/27/06

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16 MARILYN T. HUFF, District Judge  
17 UNITED STATES DISTRICT COURT  
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